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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 MONSANTO COMPANY, *et al.*,

13 Defendants.  
14

Case No. C17-53RSL

ORDER DENYING MOTION  
FOR STAY

15 This matter comes before the Court on defendants’ “Motion to Stay Execution of  
16 Remand Pending Appeal.” Dkt. # 37. The Court has considered the parties memoranda, filings,  
17 and the rest of the record.<sup>1</sup> For the following reasons, the motion is DENIED.

18 The State of Washington filed this environmental-contamination case in King County  
19 Superior Court against three defendants (collectively “Monsanto”), which are successor  
20 companies that, until the late 1990s, comprised different divisions of the food and chemical  
21 conglomerate Monsanto. Washington alleges that Monsanto made and sold polychlorinated  
22 biphenyls (“PCBs”), industrial compounds regulated as toxic, that now contaminate state lands  
23 and waterways. Monsanto removed the case to this Court, asserting subject matter jurisdiction  
24 because Monsanto produced the PCBs while acting under color of a federal officer or agency  
25 within the meaning of 28 U.S.C. § 1442(a)(1). The Court rejected Monsanto’s argument and  
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27 <sup>1</sup> The Court concludes this motion can be decided on the papers submitted. Defendants’ request for oral  
28 argument is denied.

1 remanded the case to state court. Dkt. # 36. Monsanto appealed the Court's order and filed the  
2 instant motion seeking to stay the order of remand pending appeal. Dkt. # 37.

3 Whether defendants are entitled to a stay pending appeal depends on ““(1) whether the  
4 stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether  
5 the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
6 substantially injure the other parties interested in the proceeding; and (4) where the public  
7 interest lies.”” Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting Hilton v. Braunskill, 481 U.S.  
8 770, 776 (1987)).

9 After weighing the relevant factors, the Court concludes a stay is not warranted.  
10 Monsanto has not made a strong showing of likely success on the merits, because the record  
11 does not sufficiently suggest that the government supervised, directed, or controlled either  
12 Monsanto's production of PCBs or its concealment of the contaminants' dangerousness. See  
13 Cabalce v. Thomas E. Blanchard & Associates, Inc., 797 F.3d 720 (9th Cir. 2015). Defendants  
14 are also unlikely to suffer irreparable harm absent a stay. Defendants will be able to pursue an  
15 appeal of the remand order—indeed, that appeal is currently ongoing. Defendants will incur  
16 some additional costs of pursuing an appeal without a stay, but those costs are unlikely to  
17 amount to irreparable injury.

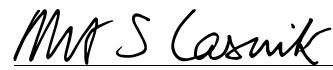
18 Given these conclusions and because “[t]he first two factors [in the determination of a  
19 stay pending appeal] . . . are the most critical,” Nken, 556 U.S. at 434, the Court need not  
20 continue its inquiry into the necessity of a stay.<sup>2</sup>

21 For the foregoing reasons, defendants' motion, Dkt. # 37, is DENIED.  
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25 <sup>2</sup> Monsanto also requests that the Court disregard Washington's response in opposition to this motion  
26 because the response was not timely filed under the applicable local filing deadlines. LCR 7(d)(3)  
27 requires that any opposition papers be filed and served no later than the Monday before the noting date.  
28 Washington's response was filed two days late. The Court takes note of Washington's tardiness and  
admonishes counsel to timely submit filings, if there are any, in the future, but the Court finds it  
unnecessary to disregard the response in its entirety.

1 DATED this 23rd day of March, 2018.

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4 Robert S. Lasnik  
5 United States District Judge  
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